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United States District Court
Central District of California
Western Division

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12 | JORGE ORTIZ,   CV 18-00704 TJH (SHKx)

13 | Plaintiff,

14 | v.

15 | ANTHONY LEE,   Order
                                                         JS-6
16 | Defendant.

17

18   The Court has considered Plaintiff Jorge Ortiz's *ex parte* application to remand,

19 together with the moving and opposing papers.

20   On January 18, 2018, Ortiz initiated an unlawful detainer action in California

21 Superior Court for the County of Riverside against Defendant Anthony Lee, in part,

22 because Lee was, allegedly selling marijuana on the leased premises. On April 5,

23 2018, Lee removed to this Court on the basis of federal question jurisdiction –

24 contending that, *inter alia*, the First and Fourteenth Amendments were implicated

25 because the property was being used as a church and that marijuana is "the sacrament

26 of the church." On May 22, 2018, Ortiz filed an *ex parte* application to remand.

27   An *ex parte* application must be accompanied by a memorandum explaining,

28 *inter alia*, the reasons for seeking emergency relief. *See* Local Rule 7-19. Here, Ortiz

failed to provide any basis to warrant emergency relief and why he could not have filed a regularly noticed motion instead. Accordingly, this is an improper *ex parte* application.
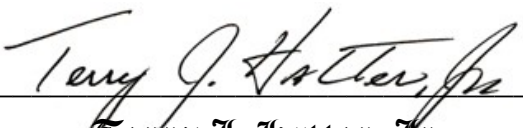
Regardless, the Court has an obligation to determine, *sua sponte*, whether it has subject matter jurisdiction. *See Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 Fed. Appx. 62, *1 (9th Cir. 2011). Lee removed this action because his defenses are based upon federal law. However, "a case may not be removed to federal court on the basis of a federal defense." *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998).

Accordingly,

It is Ordered that the *ex parte* application to remand be, and hereby is, Denied.

It is further Ordered, *sua sponte*, that the case be, and hereby is, remanded to California Superior Court for the County of Riverside.

Date: June 6, 2018

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Terry J. Hatter, Jr.
Senior United States District Judge